

MONTANA CODE ANNOTATED (MCA)  
TITLE 53. SOCIAL SERVICES AND INSTITUTIONS  
CHAPTER 24. ALCOHOLISM AND DRUG DEPENDENCE

Part 1. General Provisions

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**Part 1. General Provisions**

**53-24-101. Legislative purpose.** It is the purpose of this chapter and the policy of this state to recognize chemical dependency as a problem affecting the health, safety, morals, economy, and general welfare of this state; to recognize chemical dependency as a problem subject to treatment; and to recognize the sufferer of chemical dependency as worthy of treatment and rehabilitation. It is the intent of this chapter to establish means whereby the appropriate resources of this state may be focused fully and effectively upon the problem of chemical dependency and utilized in implementing programs for the control and treatment of this problem.

**History:** En. Sec. 1, Ch. 303, L. 1969; Sec. 69-6201, R.C.M. 1947; redes. 80-2701 by Sec. 6, Ch. 280, L. 1975; amd. Sec. 49, Ch. 37, L. 1977; R.C.M. 1947, 80-2701; amd. Sec. 1, Ch. 406, L. 1983.

**53-24-102. Declaration of policy.** It is the policy of the state of Montana to recognize alcoholism as an illness and that alcoholics and intoxicated persons may not be subjected to criminal prosecution because of their consumption of alcoholic beverages but rather should be afforded a continuum of treatment in order that they may lead normal lives as productive members of society.

**History:** En. 69-6211 by Sec. 1, Ch. 302, L. 1974; Sec. 69-6211, R.C.M. 1947; redes. 80-2708 by Sec. 6, Ch. 280, L. 1975; R.C.M. 1947, 80-2708.

**53-24-103. Definitions.** For purposes of this chapter, the following definitions apply:

(1) "Alcoholic" means a person who has a chronic illness or disorder of behavior characterized by repeated drinking of alcoholic beverages to the extent that it endangers the health, interpersonal relationships, or economic function of the individual or public health, welfare, or safety.

(2) "Approved private treatment facility" means a private agency that has as its function the treatment, rehabilitation, and prevention of chemical dependency, that meets the standards prescribed in [53-24-208](#)(1), and that is approved under [53-24-208](#).

(3) "Approved public treatment facility" means:

(a) a treatment agency operating under the direction and control of the department as a state agency and approved under [53-24-208](#); or

(b) a treatment agency operating under the direction and control of a local government and approved under [53-24-208](#).

(4) "Chemical dependency" means the use of any chemical substance, legal or illegal, that creates behavioral or health problems, or both, resulting in operational impairment. This term includes alcoholism, drug dependency, or both, that endanger the health, interpersonal relationships, or economic functions of an individual or the public health, welfare, or safety.

(5) "Commission on accreditation of rehabilitation facilities" means the organization nationally recognized by that name that surveys rehabilitation facilities upon their requests and grants accreditation status to a rehabilitation facility that it finds meets its standards and requirements.

(6) "Department" means the department of public health and human services provided for in [2-15-2201](#).

(7) "Family member" is the spouse, mother, father, child, or member of the household of a chemically dependent person whose life has been affected by the actions of the chemically dependent person and who

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may require treatment.

(8) "Incapacitated by alcohol" means that a person, as a result of the use of alcohol, is unconscious or has judgment otherwise so impaired that the person is incapable of realizing and making a rational decision with respect to a need for treatment.

(9) "Incompetent person" means a person who has been adjudged incompetent by the district court.

(10) "Intoxicated person" means a person whose mental or physical functioning is substantially impaired as a result of the use of alcohol.

(11) "Prevention" has meaning on four levels; these are:

(a) education to provide information to the school children and general public relating to chemical dependency treatment and rehabilitative services and to reduce the consequences of life experiences acquired by contact with a chemically dependent person;

(b) early detection and recovery from the illness before lasting emotional or physical damage, or both, have occurred;

(c) if lasting emotional or physical damage, or both, have occurred, to arrest the illness before full disability has been reached;

(d) the provision of facility requirements to meet division program standards and improve public accessibility for services.

(12) "Rehabilitation facility" means a facility that is operated for the primary purpose of assisting in the rehabilitation of disabled individuals by providing comprehensive medical evaluations and services, psychological and social services, or vocational evaluation and training or any combination of these services and in which the major portion of the services is furnished within the facility.

(13) "Treatment" means the broad range of emergency, outpatient, intermediate, and inpatient services and care, including diagnostic evaluation, medical, psychiatric, psychological, and social service care, vocational rehabilitation, and career counseling, which may be extended to chemically dependent persons, intoxicated persons, and family members.

**History:** En. 69-6212 by Sec. 2, Ch. 302, L. 1974; Sec. 69-6212, R.C.M. 1947; amd. and redes. 80-2709 by Sec. 2, Ch. 280, L. 1975; amd. Sec. 1, Ch. 414, L. 1977; R.C.M. 1947, 80-2709; amd. Sec. 1, Ch. 711, L. 1979; amd. Sec. 2, Ch. 406, L. 1983; amd. Sec. 1, Ch. 513, L. 1983; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 503, Ch. 546, L. 1995; amd. Sec. 5, Ch. 188, L. 1997.

**53-24-104. Deposit of funds from federal or private sources with state treasurer.** Funds available to the department from federal or private sources for use in chemical dependency prevention, treatment, and control programs shall be deposited with the state treasurer to the account of the department in the federal special revenue fund or the state special revenue fund.

**History:** En. Sec. 7, Ch. 303, L. 1969; Sec. 69-6207, R.C.M. 1947; redes. 80-2707 by Sec. 6, Ch. 280, L. 1975; R.C.M. 1947, 80-2707; amd. Sec. 15, Ch. 38, L. 1979; amd. Sec. 2, Ch. 277, L. 1983; amd. Sec. 3, Ch. 406, L. 1983; amd. Sec. 5, Ch. 700, L. 1989.

**53-24-105. Application of administrative procedure act.** The Montana Administrative Procedure Act applies to and governs all administrative actions taken under this chapter.

**History:** En. 69-6224 by Sec. 14, Ch. 302, L. 1974; Sec. 69-6224, R.C.M. 1947; redes. 80-2721 by Sec. 6, Ch. 280, L. 1975; R.C.M. 1947, 80-272

**53-24-106. Criminal laws limitation.** (1) A county, municipality, or other political subdivision may not adopt or enforce a local law, ordinance, resolution, or rule having the force of law that includes drinking, being a common drunkard, or being found in an intoxicated condition as one of the elements of the offense giving rise to a criminal or civil penalty or sanction.

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(2) This section does not affect any law, ordinance, resolution, or rule against drunken driving, driving under the influence of alcohol, or other similar offense involving the operation of a vehicle, an aircraft, a boat, machinery, or other equipment or regarding the sale, purchase, dispensing, possessing, or use of alcoholic beverages at stated times and places or by a particular class of persons.

(3) This section does not prevent the department from imposing a sanction on or denying eligibility to applicants for or recipients of public assistance who fail or refuse to comply with all eligibility criteria and program requirements.

**History:** En. 80-2723 by Sec. 2, Ch. 403, L. 1975; R.C.M. 1947, 80-2723; amd. Sec. 41, Ch. 465, L. 2001.

**53-24-107. Public intoxication not criminal offense.** (1) A person who appears to be intoxicated in public does not commit a criminal offense solely by reason of being in an intoxicated condition but may be detained by a peace officer for the person's own protection. A peace officer who detains a person who appears to be intoxicated in public shall proceed in the manner provided in [53-24-303](#) and subsection (3) of this section.

(2) If none of the alternatives in [53-24-303](#) are reasonably available, a peace officer may detain a person who appears to be intoxicated until the person is no longer creating a risk to self or others.

(3) A peace officer, in detaining the person, shall make every reasonable effort to protect the person's health and safety. The peace officer may take reasonable steps for the officer's own protection. An entry or other record may not be made to indicate that the person detained under this section has been arrested or charged with a crime.

(4) A peace officer, acting within the scope of the officer's authority under this chapter, is not personally liable for the officer's actions.

**History:** En. 80-2724 by Sec. 3, Ch. 403, L. 1975; R.C.M. 1947, 80-2724; amd. Sec. 1, Ch. 442, L. 2005.

**53-24-108. Use of funds generated by taxation on alcoholic beverages.** (1) Revenue generated by [16-1-404](#), [16-1-406](#), and [16-1-411](#) and allocated to the department to be used in state-approved private or public programs whose function is the treatment, rehabilitation, and prevention of alcoholism, which for the purposes of this section includes chemical dependency, must be distributed as follows:

(a) 20% is statutorily appropriated, as provided in [17-7-502](#), to be allocated as provided in [53-24-206](#)(3)(b), and must be distributed as grants to state-approved private or public alcoholism programs;

(b) 6.6% is statutorily appropriated, as provided in [17-7-502](#), to be distributed to state-approved private or public alcoholism programs that provide services for treatment and rehabilitation for persons with co-occurring serious mental illness and chemical dependency; and

(c) the remainder of funds not statutorily appropriated in subsections (1)(a) and (1)(b) may be distributed:

(i) as payment of fees for alcoholism services provided by state-approved private or public alcoholism programs and licensed hospitals for detoxification services; or

(ii) as matching funds for the Montana medicaid program administered by the department that are used for alcoholism and chemical dependency programs.

(2) A person operating a state-approved alcoholism program may not be required to provide matching funds as a condition of receiving a grant under subsection (1)(a).

(3) In addition to funding received under this section, a person operating a state-approved alcoholism program may accept gifts, bequests, or the donation of services or money for the treatment, rehabilitation, or prevention of alcoholism.

(4) A person receiving funding under this section to support operation of a state-approved alcoholism program may not refuse alcoholism treatment, rehabilitation, or prevention services to a person solely because of that person's inability to pay for those services.

(5) A grant made under this section is subject to the following conditions:

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(a) The grant application must contain an estimate of all program income, including income from earned fees, gifts, bequests, donations, and grants from other than state sources during the period for which grant support is sought.

(b) Whenever, during the period of grant support, program income exceeds the amount estimated in the grant application, the amount of the excess must be reported to the grantor.

(c) The excess must be used by the grantee under the terms of the grant in accordance with one or a combination of the following options:

(i) use for any purpose that furthers the objectives of the legislation under which the grant was made; or

(ii) to allow program growth through the expansion of services or for capital expenditures necessary to improve facilities where services are provided.

(6) Revenue generated by [16-1-404](#), [16-1-406](#), and [16-1-411](#) for the treatment, rehabilitation, and prevention of alcoholism that has not been encumbered for those purposes by the counties of Montana or the department must be returned to the state special revenue fund for the treatment, rehabilitation, and prevention of alcoholism within 30 days after the close of each fiscal year and must be distributed by the department the following year as provided in [53-24-206](#)(3)(b).

**History:** En. 80-2725 by Sec. 7, Ch. 414, L. 1977; R.C.M. 1947, 80-2725; amd. Sec. 16, Ch. 38, L. 1979; amd. Sec. 2, Ch. 711, L. 1979; amd. Sec. 1, Ch. 183, L. 1981; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 2, Ch. 513, L. 1983; amd. Sec. 1, Ch. 402, L. 1987; amd. Sec. 47, Ch. 422, L. 1997; amd. Sec. 4, Ch. 470, L. 2001; amd. Sec. 1, Ch. 21, Sp. L. August 2002; amd. Sec. 2, Ch. 140, L. 2003.

## **Part 2. Administration by Department of Public Health and Human Services**

**53-24-201. Department to administer chapter.** The department shall administer the provisions of this chapter.

**History:** En. Sec. 5, Ch. 303, L. 1969; Sec. 69-6205, R.C.M. 1947; redes. 80-2705 by Sec. 6, Ch. 280, L. 1975; R.C.M. 1947, 80-2705.

**53-24-202. State and local government to cooperate with department.** All agencies of state government, local government, and all state and local government employees shall, upon request, cooperate with the department in its activities under this chapter, but nothing in the chapter shall be construed to give the department control over any state or local agency or employee unless otherwise provided by law.

**History:** En. Sec. 6, Ch. 303, L. 1969; Sec. 69-6206, R.C.M. 1947; redes. 80-2706 by Sec. 6, Ch. 280, L. 1975; R.C.M. 1947, 80-2706.

**53-24-203. Repealed.** Sec. 9, Ch. 711, L. 1979.

**History:** (1) thru (5)En. Sec. 3, Ch. 303, L. 1969; amd. Sec. 94, Ch. 349, L. 1974; Sec. 69-6203, R.C.M. 1947; amd. and redes. 80-2702 by Sec. 1, Ch. 280, L. 1975; amd. Sec. 50, Ch. 37, L. 1977; Sec. 80-2702, R.C.M. 1947; (6) thru (22)En. 69-6214 by Sec. 4, Ch. 302, L. 1974; Sec. 69-6214, R.C.M. 1947; redes. 80-2711 by Sec. 6, Ch. 280, L. 1975; Sec. 80-2711, R.C.M. 1947; R.C.M. 1947, 80-2702(1), 80-2711.

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**53-24-204. Powers and duties of department.** (1) To carry out this chapter, the department may:

- (a) accept gifts, grants, and donations of money and property from public and private sources;
- (b) enter into contracts;
- (c) acquire and dispose of property.

(2) The department shall:

- (a) approve treatment facilities as provided for in [53-24-208](#);
- (b) prepare a comprehensive long-term state chemical dependency plan every 4 years and update this plan each biennium;
- (c) provide for and conduct statewide service system evaluations;
- (d) distribute state and federal funds to the counties for approved treatment programs in accordance with the provisions of [53-24-108](#) and [53-24-206](#);
- (e) plan in conjunction with approved programs and provide for training of program personnel delivering services to persons with a chemical dependency;
- (f) establish criteria to be used for the development of new programs;
- (g) encourage planning for the greatest use of funds by discouraging duplication of services, encouraging efficiency of services through existing programs, and encouraging rural counties to form multicounty districts or contract with urban programs for services;
- (h) cooperate with the board of pardons and parole in establishing and conducting programs to provide treatment for intoxicated persons and persons with a chemical dependency in or on parole from penal institutions;
- (i) establish standards for chemical dependency educational courses provided by state-approved treatment programs and approve or disapprove the courses; and
- (j) assist all interested public agencies and private organizations in developing education and prevention programs for chemical dependency.

**History:** Ap.p. Sec. 3, Ch. 303, L. 1969; amd. Sec. 94, Ch. 349, L. 1974; R.C.M. 1947, 69-6203; amd. and redes. 80-2702 by Sec. 1, Ch. 280, L. 1975; amd. Sec. 50, Ch. 37, L. 1977; Sec. 80-2702, R.C.M. 1947; Ap.p. Sec. 3, Ch. 302, L. 1974; Sec. 69-6213, R.C.M. 1947; redes. 80-2710 by Sec. 6, Ch. 280, L. 1975; amd. Sec. 2, Ch. 414, L. 1977; Sec. 80-2710, R.C.M. 1947; R.C.M. 1947, 80-2702(2), 80-2710; amd. Sec. 3, Ch. 711, L. 1979; amd. Sec. 176, Ch. 575, L. 1981; amd. Sec. 1, Ch. 365, L. 1983; amd. Sec. 4, Ch. 406, L. 1983; amd. Sec. 1, Ch. 126, L. 1985; amd. Sec. 42, Ch. 112, L. 1991; amd. Sec. 1, Ch. 186, L. 1991; amd. Sec. 38, Ch. 349, L. 1993; amd. Sec. 504, Ch. 546, L. 1995; amd. Sec. 13, Ch. 507, L. 1997; amd. Sec. 3, Ch. 140, L. 2003.

**53-24-205. Repealed.** Sec. 15, Ch. 140, L. 1985.

**History:** En. 80-2703 by Sec. 4, Ch. 280, L. 1975; R.C.M. 1947, 80-2703.

**53-24-206. Administration of financial assistance.** (1) The department may apply for and receive grants, allotments, or allocations of funds or other assistance for purposes pertaining to the problems of chemical dependency or related social problems under laws and rules of the United States, any other state, or any private organization.

(2) The department may cooperate with any other government agency or private organization in programs on chemical dependency or related social problems. In carrying out cooperative programs, the department may make grants of financial assistance to government agencies and private organizations under terms and conditions agreed upon.

(3) (a) In administering proceeds derived from the liquor license tax, the beer license tax, or the wine tax, the department shall distribute those funds appropriated by the legislature. Money that is appropriated for distribution to approved private or public programs on a discretionary basis must be distributed to

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those programs that can demonstrate that:

- (i) the program is achieving the goals and objectives mutually agreed upon by the program and the department; and
  - (ii) the receipt of additional funds would be justified.
- (b) The remainder of the proceeds that are not appropriated, as provided in subsection (3)(a), or that are not statutorily appropriated in [53-24-108](#)(1)(b) must be distributed to the counties for use by approved private or public programs. The distribution of these proceeds is statutorily appropriated as provided in [17-7-502](#) and must be distributed in the following manner:
- (i) Eighty-five percent must be allocated according to the proportion of each county's population to the state's population according to the most recent United States census.
  - (ii) Fifteen percent must be allocated according to the proportion of the county's land area to the state's land area.
- (c) Money distributed under subsection (3) may only be used for purposes pertaining to the problems of alcoholism and chemical dependency.

**History:** En. Sec. 4, Ch. 303, L. 1969; Sec. 69-6204, R.C.M. 1947; redes. 80-2704 by Sec. 6, Ch. 280, L. 1975; R.C.M. 1947, 80-2704; amd. Sec. 17, Ch. 38, L. 1979; amd. Sec. 4, Ch. 711, L. 1979; amd. Sec. 5, Ch. 406, L. 1983; amd. Sec. 3, Ch. 513, L. 1983; amd. Sec. 32, Ch. 703, L. 1985; amd. Sec. 2, Ch. 402, L. 1987; amd. Sec. 5, Ch. 470, L. 2001; amd. Sec. 4, Ch. 140, L. 2003.

**53-24-207. Comprehensive program for treatment.** (1) The department shall establish a comprehensive and coordinated program for the treatment of chemically dependent persons, intoxicated persons, and family members.

- (2) The program must include:
  - (a) emergency treatment provided by a facility affiliated with or part of the medical service of a general hospital;
  - (b) inpatient treatment;
  - (c) intermediate treatment;
  - (d) outpatient treatment; and
  - (e) followup services.
- (3) The department shall provide for adequate and appropriate treatment for alcoholics and intoxicated persons admitted under [53-24-301](#) through [53-24-303](#).
- (4) All appropriate public and private resources must be coordinated with and used in the program if possible.
- (5) The department shall prepare, publish, and distribute annually a list of all approved public and private treatment facilities.

**History:** En. 69-6215 by Sec. 5, Ch. 302, L. 1974; Sec. 69-6215, R.C.M. 1947; redes. 80-2712 by Sec. 6, Ch. 280, L. 1975; amd. Sec. 3, Ch. 414, L. 1977; R.C.M. 1947, 80-2712; amd. Sec. 5, Ch. 711, L. 1979; amd. Sec. 6, Ch. 406, L. 1983; amd. Sec. 3, Ch. 165, L. 1995.

**53-24-208. Facility standards.** (1) The department shall establish standards for approved treatment facilities that must be met for a treatment facility to be approved as a public or private treatment facility and fix the fees to be charged for the required inspections. The standards must be adopted by rule and may concern the health standards to be met and standards for the approval of treatment programs for patients.

- (2) Facilities applying for approval shall demonstrate that a local need currently exists for proposed services and that the proposed services do not duplicate existing local services.
- (3) The department shall periodically inspect approved public and private treatment facilities at

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reasonable times and in a reasonable manner.

(4) The department shall maintain a list of approved public and private treatment facilities.

(5) Each approved public or private treatment facility shall, on request, file with the department data, statistics, schedules, and information that the department reasonably requires. An approved public or private treatment facility that without good cause fails to furnish any data, statistics, schedules, or information as requested or files fraudulent returns of the requested material must be removed from the list of approved treatment facilities.

(6) The department, after holding a hearing in accordance with the Montana Administrative Procedure Act, may suspend, revoke, limit, or restrict an approval or refuse to grant an approval for failure to meet its standards.

(7) A district court may restrain any violation of this section, review any denial, restriction, or revocation of approval, and grant other relief required to enforce its provisions.

(8) Upon petition of the department and after a hearing held upon reasonable notice to the facility, a district court may issue a warrant to the department authorizing it to enter and inspect at reasonable times and examine the books and accounts of any approved public or private treatment facility that refuses to consent to inspection or examination by the department or that the department has reasonable cause to believe is operating in violation of this chapter.

(9) If a rehabilitation facility otherwise meets the requirements of subsection (2), the department may consider as eligible for approval during the accreditation period any rehabilitation facility that furnishes written evidence, including the recommendation for future compliance statements, of accreditation of its programs by the commission on accreditation of rehabilitation facilities. The department may, but is not required to, inspect a facility considered eligible for approval under this section to ensure compliance with state approval standards.

**History:** En. 69-6216 by Sec. 6, Ch. 302, L. 1974; Sec. 69-6216, R.C.M. 1947; redes. 80-2713 by Sec. 6, Ch. 280, L. 1975; R.C.M. 1947, 80-2713; amd. Sec. 7, Ch. 711, L. 1979; amd. Sec. 1, Ch. 393, L. 1991; amd. Sec. 6, Ch. 188, L. 1997.

**53-24-209. Rules for acceptance for treatment.** The department shall adopt rules for acceptance of persons into the treatment program, considering available treatment resources and facilities, for the purpose of early and effective treatment of chemically dependent persons, intoxicated persons, and family members. In adopting the rules, the department must be guided by the following standards:

(1) If possible, a patient must be treated on a voluntary rather than an involuntary basis.

(2) A patient must be initially assigned or transferred to outpatient treatment unless found to require inpatient treatment.

(3) An individualized treatment plan must be prepared and maintained on a current basis for each person.

(4) Provision must be made for a continuum of coordinated treatment services so that a person who leaves a facility or a form of treatment will have available and use other appropriate treatment.

**History:** En. 69-6217 by Sec. 7, Ch. 302, L. 1974; Sec. 69-6217, R.C.M. 1947; redes. 80-2714 by Sec. 6, Ch. 280, L. 1975; amd. Sec. 4, Ch. 414, L. 1977; R.C.M. 1947, 80-2714; amd. Sec. 7, Ch. 406, L. 1983; amd. Sec. 4, Ch. 513, L. 1983; amd. Sec. 1, Ch. 164, L. 1995.

**53-24-210. Repealed.** Sec. 56, Ch. 349, L. 1993.

**History:** En. 69-6225 by Sec. 19, Ch. 302, L. 1974; Sec. 69-6225, R.C.M. 1947; amd. and redes. 80-2722 by Sec. 3, Ch. 280, L. 1975; R.C.M. 1947, 80-2722(part); amd. Sec. 8, Ch. 406, L. 1983; amd. Sec. 43, Ch. 112, L. 1991.



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**53-24-211. County plan to be submitted to department.** (1) Every 4 years each county shall submit to the department a comprehensive countywide plan for the treatment, rehabilitation, and prevention of chemical dependency. Each county shall also submit annual plan updates that include, at a minimum, allocation to approved programs of revenues generated by taxation on alcoholic beverages.

(2) The plan must have been approved by the board of county commissioners and must contain information regarding existing private and public chemical dependency programs within the county. The plan must also contain information regarding the current and future needs of the county for the treatment, rehabilitation, and prevention of chemical dependency.

(3) The department shall approve or disapprove the countywide plan and annual updates. If the department disapproves a plan or update, the county may submit another plan or update to the department. In distributing funds to approved programs in a county, the department shall give consideration to the county plan.

(4) The department may adopt rules regarding the submission, submission dates, updates, approval, and disapproval of plans and the use of plans by the department in determining the needs of the county for the treatment, rehabilitation, and prevention of chemical dependency. No money may be distributed to a county by the department for the treatment, rehabilitation, and prevention of chemical dependency if the county does not comply with these rules.

**History:** En. Sec. 8, Ch. 711, L. 1979; amd. Sec. 1, Ch. 499, L. 1981; amd. Sec. 2, Ch. 365, L. 1983; amd. Sec. 9, Ch. 406, L. 1983; amd. Sec. 2, Ch. 393, L. 1991.

**53-24-212 through 53-24-214 reserved.**

**53-24-215. Repealed.** Sec. 14, Ch. 507, L. 1997.

**History:** En. Sec. 1, Ch. 508, L. 1991; amd. Sec. 1, Ch. 249, L. 1995

**53-24-216. Repealed.** Sec. 14, Ch. 507, L. 1997.

**History:** En. Sec. 2, Ch. 508, L. 1991.

### **Part 3. Treatment of Alcoholics and Intoxicated Persons**

**53-24-301. Treatment of the chemically dependent.** (1) An applicant for voluntary admission or court-referred admission to an approved public treatment facility shall obtain confirmation from a licensed addiction counselor that the applicant is chemically dependent and appropriate for inpatient, freestanding care as described in the administrative rules. The department shall adopt rules to establish policies and procedures governing assessment, patient placement, confirmation, and admission to an approved public treatment facility. If the proposed patient is a minor or an incompetent person, the proposed patient, a parent, legal guardian, or other legal representative may make the application.

(2) Subject to rules adopted by the department, the administrator of an approved public treatment facility may determine who is admitted for treatment. If a person is refused admission to an approved public treatment facility, the administrator, subject to departmental rules, shall refer the person to an approved private treatment facility for treatment if possible and appropriate.

(3) If a patient receiving inpatient care leaves an approved public treatment facility, the patient must be encouraged to consent to appropriate outpatient or intermediate treatment. If it appears to the



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administrator of the treatment facility that the patient is chemically dependent and requires help, the department shall arrange for assistance in obtaining supportive services and residential facilities.

(4) If a patient leaves an approved public treatment facility, with or against the advice of the administrator of the facility, the department shall make reasonable provisions for the patient's transportation to another facility or to the patient's home. If the patient has no home, the patient must be assisted in obtaining shelter. If the patient is a minor or an incompetent person, the request for discharge from an inpatient facility must be made by a parent, legal guardian, or other legal representative or by the minor or incompetent, if the minor or incompetent person was the original applicant.

**History:** En. 69-6218 by Sec. 8, Ch. 302, L. 1974; Sec. 69-6218, R.C.M. 1947; redes. 80-2715 by Sec. 6, Ch. 280, L. 1975; R.C.M. 1947, 80-2715; amd. Sec. 2, Ch. 164, L. 1995; amd. Sec. 17, Ch. 23, L. 2001.

**53-24-302. (Temporary) Involuntary commitment of alcoholics.** (1) A person may be committed to the custody of the department by the district court upon the petition of the person's spouse or guardian, a relative, the certifying physician, or the chief of any approved public treatment facility. The petition must allege that the person is an alcoholic who habitually lacks self-control as to the use of alcoholic beverages and that the person has threatened, attempted, or inflicted physical harm on another and that unless committed is likely to inflict physical harm on another or is incapacitated by alcohol. A refusal to undergo treatment does not constitute evidence of lack of judgment as to the need for treatment. The petition must be accompanied by a certificate of a licensed physician who has examined the person within 2 days before submission of the petition unless the person whose commitment is sought has refused to submit to a medical examination, in which case the fact of refusal must be alleged in the petition. The certificate must set forth the physician's findings in support of the allegations of the petition. A physician employed by the admitting facility or the department is not eligible to be the certifying physician.

(2) Upon filing the petition, the court shall fix a date for a hearing no later than 10 days after the date the petition was filed. A copy of the petition and of the notice of the hearing, including the date fixed by the court, must be served on the petitioner, the person whose commitment is sought, the person's next of kin other than the petitioner, a parent or the person's legal guardian if the person is a minor, the administrator in charge of the approved public treatment facility to which the person has been committed for emergency care, and any other person the court believes advisable. A copy of the petition and certificate must be delivered to each person notified.

(3) At the hearing, the court shall hear all relevant testimony, including, if possible, the testimony of at least one licensed physician who has examined the person whose commitment is sought. The person has a right to have a licensed physician of the person's own choosing conduct an examination and testify on the person's behalf. If the person has no funds with which to pay the physician, the reasonable costs of one examination and testimony must be paid by the county. The person must be present unless the court believes that the person's presence is likely to be injurious to the person. The person must be advised of the right to counsel, and if the person is unable to hire counsel, the court shall appoint an attorney to represent the person at the expense of the county. The court shall examine the person in open court or, if advisable, shall examine the person in chambers. If the person refuses an examination by a licensed physician and there is sufficient evidence to believe that the allegations of the petition are true or if the court believes that more medical evidence is necessary, the court may make a temporary order committing the person to the department for a period of not more than 5 days for purposes of a diagnostic examination.

(4) If after hearing all relevant evidence, including the results of any diagnostic examination by the department, the court finds that grounds for involuntary commitment have been established by clear and convincing evidence, it shall make an order of commitment to the department. The court may not order commitment of a person unless it determines that the department is able to provide adequate and appropriate treatment for the person and that the treatment is likely to be beneficial.

(5) A person committed under this section must remain in the custody of the department for treatment

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for a period of 40 days unless sooner discharged. At the end of the 40-day period, the person must automatically be discharged unless before expiration of the period the department obtains a court order from the district court of the committing district for the person's recommitment upon the grounds set forth in subsection (1) for a further period of 90 days unless sooner discharged. If a person has been committed because the person is an alcoholic likely to inflict physical harm on another, the department shall apply for recommitment if after examination it is determined that the likelihood still exists.

(6) A person recommitted under subsection (5) who has not been discharged by the department before the end of the 90-day period must be discharged at the expiration of that period unless before expiration of the period the department obtains a court order from the district court of the committing district on the grounds set forth in subsection (1) for recommitment for a further period not to exceed 90 days. If a person has been committed because the person is an alcoholic likely to inflict physical harm on another, the department shall apply for recommitment if after examination it is determined that the likelihood still exists. Only two recommitment orders under subsections (5) and (6) are permitted.

(7) Upon the filing of a petition for recommitment under subsection (5) or (6), the court shall fix a date for hearing no later than 10 days after the date the petition was filed. A copy of the petition and of the notice of hearing, including the date fixed by the court, must be served on the petitioner, the person whose commitment is sought, the person's next of kin other than the petitioner, the original petitioner under subsection (1) if different from the petitioner for recommitment, one of the person's parents or the person's legal guardian if the person is a minor, and any other person the court believes advisable. At the hearing, the court shall proceed as provided in subsection (3).

(8) A person committed to the custody of the department for treatment must be discharged at any time before the end of the period for which the person has been committed if either of the following conditions is met:

(a) in case of an alcoholic committed on the grounds of likelihood of infliction of physical harm upon another, that the person is no longer in need of treatment or the likelihood no longer exists; or

(b) in case of an alcoholic committed on the grounds of incapacity and the need of treatment, that the incapacity no longer exists, further treatment will not be likely to bring about significant improvement in the person's condition, or treatment is no longer adequate or appropriate.

(9) The court shall inform the person whose commitment or recommitment is sought of the person's right to contest the application, be represented by counsel at every stage of any proceedings relating to the person's commitment and recommitment, and have counsel appointed by the court or provided by the court if the person wants the assistance of counsel and is unable to obtain counsel. If the court believes that the person needs the assistance of counsel, the court shall require, by appointment if necessary, counsel for the person regardless of the person's wishes. The person whose commitment or recommitment is sought must be informed of the right to be examined by a licensed physician of the person's choice. If the person is unable to obtain a licensed physician and requests examination by a physician, the court shall employ a licensed physician.

(10) If a private treatment facility agrees with the request of a competent patient or the patient's parent, sibling, adult child, or guardian to accept the patient for treatment, the department may transfer the patient to the private treatment facility.

(11) A person committed under this section may at any time seek to be discharged from commitment by writ of habeas corpus or other appropriate means.

(12) The venue for proceedings under this section is the place in which the person to be committed resides or is present.

**53-24-302. (Effective July 1, 2006). Involuntary commitment of alcoholics -- rights.** (1) A person may be committed to the custody of the department by the district court upon the petition of the person's spouse or guardian, a relative, the certifying physician, or the chief of any approved public treatment facility. The petition must allege that the person is an alcoholic who habitually lacks self-control as to the use of alcoholic beverages and that the person has threatened, attempted, or inflicted physical harm on another and that unless committed is likely to inflict physical harm on another or is incapacitated by

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alcohol. A refusal to undergo treatment does not constitute evidence of lack of judgment as to the need for treatment. The petition must be accompanied by a certificate of a licensed physician who has examined the person within 2 days before submission of the petition unless the person whose commitment is sought has refused to submit to a medical examination, in which case the fact of refusal must be alleged in the petition. The certificate must set forth the physician's findings in support of the allegations of the petition. A physician employed by the admitting facility or the department is not eligible to be the certifying physician.

(2) Upon filing the petition, the court shall fix a date for a hearing no later than 10 days after the date the petition was filed. A copy of the petition and of the notice of the hearing, including the date fixed by the court, must be served on the petitioner, the person whose commitment is sought, the person's next of kin other than the petitioner, a parent or the person's legal guardian if the person is a minor, the administrator in charge of the approved public treatment facility to which the person has been committed for emergency care, and any other person the court believes advisable. A copy of the petition and certificate must be delivered to each person notified.

(3) At the hearing, the court shall hear all relevant testimony, including, if possible, the testimony of at least one licensed physician who has examined the person whose commitment is sought. The person has a right to have a licensed physician of the person's own choosing conduct an examination and testify on the person's behalf. If the person has no funds with which to pay the physician, the reasonable costs of one examination and testimony must be paid by the county. The person must be present unless the court believes that the person's presence is likely to be injurious to the person. The court shall examine the person in open court or, if advisable, shall examine the person in chambers. If the person refuses an examination by a licensed physician and there is sufficient evidence to believe that the allegations of the petition are true or if the court believes that more medical evidence is necessary, the court may make a temporary order committing the person to the department for a period of not more than 5 days for purposes of a diagnostic examination.

(4) If after hearing all relevant evidence, including the results of any diagnostic examination by the department, the court finds that grounds for involuntary commitment have been established by clear and convincing evidence, it shall make an order of commitment to the department. The court may not order commitment of a person unless it determines that the department is able to provide adequate and appropriate treatment for the person and that the treatment is likely to be beneficial.

(5) A person committed under this section must remain in the custody of the department for treatment for a period of 40 days unless sooner discharged. At the end of the 40-day period, the person must automatically be discharged unless before expiration of the period the department obtains a court order from the district court of the committing district for the person's recommitment upon the grounds set forth in subsection (1) for a further period of 90 days unless sooner discharged. If a person has been committed because the person is an alcoholic likely to inflict physical harm on another, the department shall apply for recommitment if after examination it is determined that the likelihood still exists.

(6) A person recommitted under subsection (5) who has not been discharged by the department before the end of the 90-day period must be discharged at the expiration of that period unless before expiration of the period the department obtains a court order from the district court of the committing district on the grounds set forth in subsection (1) for recommitment for a further period not to exceed 90 days. If a person has been committed because the person is an alcoholic likely to inflict physical harm on another, the department shall apply for recommitment if after examination it is determined that the likelihood still exists. Only two recommitment orders under subsections (5) and (6) are permitted.

(7) Upon the filing of a petition for recommitment under subsection (5) or (6), the court shall fix a date for hearing no later than 10 days after the date the petition was filed. A copy of the petition and of the notice of hearing, including the date fixed by the court, must be served on the petitioner, the person whose commitment is sought, the person's next of kin other than the petitioner, the original petitioner under subsection (1) if different from the petitioner for recommitment, one of the person's parents or the person's legal guardian if the person is a minor, and any other person the court believes advisable. At the

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hearing, the court shall proceed as provided in subsection (3).

(8) A person committed to the custody of the department for treatment must be discharged at any time before the end of the period for which the person has been committed if either of the following conditions is met:

(a) in case of an alcoholic committed on the grounds of likelihood of infliction of physical harm upon another, that the person is no longer in need of treatment or the likelihood no longer exists; or

(b) in case of an alcoholic committed on the grounds of incapacity and the need of treatment, that the incapacity no longer exists, further treatment will not be likely to bring about significant improvement in the person's condition, or treatment is no longer adequate or appropriate.

(9) The court shall inform the person whose commitment or recommitment is sought of the person's right to contest the application, be represented by counsel at every stage of any proceedings relating to the person's commitment and recommitment, and have assigned counsel pursuant to the Montana Public Defender Act, Title 47, chapter 1, if the person wants the assistance of counsel and is unable to obtain private counsel. If the court believes that the person needs the assistance of counsel, the court shall order the office of state public defender, provided for in [47-1-201](#), to assign counsel for the person regardless of the person's wishes. The person whose commitment or recommitment is sought must be informed of the right to be examined by a licensed physician of the person's choice. If the person is unable to obtain a licensed physician and requests examination by a physician, the court shall employ a licensed physician.

(10) If a private treatment facility agrees with the request of a competent patient or the patient's parent, sibling, adult child, or guardian to accept the patient for treatment, the department may transfer the patient to the private treatment facility.

(11) A person committed under this section may at any time seek to be discharged from commitment by writ of habeas corpus or other appropriate means.

(12) The venue for proceedings under this section is the place in which the person to be committed resides or is present.

**History:** En. 69-6221 by Sec. 11, Ch. 302, L. 1974; Sec. 69-6221, R.C.M. 1947; redes. 80-2718 by Sec. 6, Ch. 280, L. 1975; R.C.M. 1947, 80-2718; amd. Sec. 1, Ch. 133, L. 1983; amd. Sec. 61, Ch. 18, L. 1995; amd. Sec. 60, Ch. 449, L. 2005.

**53-24-303. Treatment and services for intoxicated persons.** (1) A person who appears to be intoxicated in a public place and to be in need of help may be assisted to the person's home, an approved private treatment facility, or other health care facility by the police.

(2) A peace officer acting within the scope of the officer's authority under this chapter is not personally liable for the officer's actions.

**History:** En. 69-6219 by Sec. 9, Ch. 302, L. 1974; Sec. 69-6219, R.C.M. 1947; redes. 80-2716 by Sec. 6, Ch. 280, L. 1975; amd. Sec. 5, Ch. 414, L. 1977; R.C.M. 1947, 80-2716; amd. Sec. 1, Ch. 241, L. 1985; amd. Sec. 2, Ch. 165, L. 1995; amd. Sec. 2, Ch. 442, L. 2005.

**53-24-304. Repealed.** Sec. 4, Ch. 165, L. 1995.

**History:** En. 69-6220 by Sec. 10, Ch. 302, L. 1974; Sec. 69-6220, R.C.M. 1947; redes. 80-2717 by Sec. 6, Ch. 280, L. 1975; amd. Sec. 51, Ch. 37, L. 1977; amd. Sec. 6, Ch. 414, L. 1977; R.C.M. 1947, 80-2717; amd. Sec. 18, Ch. 38, L. 1979.

**53-24-305. Visitation and communication rights of patients.** (1) Subject to reasonable rules regarding hours of visitation which the department may adopt, patients in any approved treatment facility shall be granted opportunities for adequate consultation with counsel and for continuing contact with family and friends consistent with an effective treatment program.

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(2) Neither mail nor other communication to or from a patient in any approved treatment facility may be intercepted, read, or censored. The administrator may adopt reasonable rules regarding the use of telephone by patients in approved treatment facilities.

**History:** En. 69-6223 by Sec. 13, Ch. 302, L. 1974; Sec. 69-6223, R.C.M. 1947; redes. 80-2720 by Sec. 6, Ch. 280, L. 1975; R.C.M. . 1947, 80-2720.

**53-24-306. Records of chemically dependent persons, intoxicated persons, and family members.** (1)

The registration and other records of treatment facilities shall remain confidential and are privileged to the patient.

(2) Notwithstanding subsection (1), the department may make available in accordance with Title 50, chapter 16, part 5, or other applicable law information from patients' records for purposes of research into the causes and treatment of chemical dependency. Information under this subsection may not be published in a way that discloses patients' names or other identifying information.

**History:** En. 69-6222 by Sec. 12, Ch. 302, L. 1974; Sec. 69-6222, R.C.M. 1947; redes. 80-2719 by Sec. 6, Ch. 280, L. 1975; R.C.M. 1947, 80-2719; amd. Sec. 10, Ch. 406, L. 1983; amd. Sec. 29, Ch. 632, L. 1987; amd. Sec. 14, Ch. 396, L. 2003.